

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT
BACV2008-491

JOSEPH F. DUGAS and)
PAUL REVERE III)
)
Plaintiffs)
)
)
V.)
)
)
PETER ROBBINS and)
JOHN DOE)
)
Defendants)
)

SPECIAL MOTION TO DISMISS

M.G.L. c. 231 §59H

Now comes the defendant, Peter Robbins, and moves that the plaintiffs' Complaint in the above matter be dismissed pursuant to M.G.L. c. 231 §59H. As reason therefore, the defendants states the following;

1. The defendant, Peter Robbins, is a retired law enforcement officer, private investigator, boat captain and amateur photographer. He is also the author of a web-based personal diary entitled The Robbins Report. Affidavit of Peter Robbins, attached hereto as Exhibit A at ¶¶1-2.
2. The Robbins Report is one of over two hundred such "blogs" that are hosted on the website entitled Cape Cod Today (www.capecodtoday.com) under a menu entitled "Blog Chowder." Affidavit of Walter Brooks, attached hereto as Exhibit B at ¶3.

3. The Cape Cod Today website operates as an on-line aggregator of news, weather, calendar information, human interest stories and opinion from a wide variety of sources. It is the second-most read source of daily news and information on Cape Cod today – only the Cape Cod Times is read daily by more people. Id. at ¶2.
4. By providing ordinary people with a blogging platform and a readership, CapeCodToday.com has become the largest (and one of the only) site on Cape Cod for the promotion of participatory journalism - defined as ordinary citizens, as distinguished from professional journalists, engaging in the reporting and analyzing of news. Id. at ¶4.
5. These many blog posts are the subjects of wide and free-wheeling discussion among the site's 1700+ registered commenters. CapeCodToday.com editors delete comments solely on the basis of whether they contain obscene words, or statements which the public would find extremely offensive. Id. at ¶5
6. The Robbins Report is one of the blogs that focuses on the reporting and discussion of issues of public concern. In the last six months, Robbins has written (among other subjects) about the following:
 - a. An extensive series of articles that deal with the controversy surrounding the permitting of a single family home in the Cape Cod National Seashore, the Wellfleet Board of Selectmen's attempt to prevent it and the resulting threat of a civil rights lawsuit by the property owner;
 - b. the developing interest of the Town of Barnstable to purchase the "Freezer Point" property on Barnstable Harbor from developer Stuart Bornstein;

- c. the controversy surrounding efforts by individuals to rehabilitate and reopen a popular restaurant in Wellfleet, the efforts of affiliates of a competing restaurant to thwart that effort, and the septic and water quality problems of the competing restaurant;
- d. a government initiative to increase fees for recreational fishing licenses;
- e. the controversy surrounding the disappearance of numerous works of original artwork from the former Barnstable County Hospital;
- f. the controversy at issue in the litigation before this Court – the cause for the delay in effecting the dredging of Barnstable Harbor.

Robbins Affid., Exh. A at ¶4. See selected articles attached thereto as Exhibits A-1 through A-6.

- 7. Because of the significant public interest in the matters that Robbins covers, the Robbins Report is one of the most highly read blogs in Cape Cod Chowder, Robbins is compensated for his “reports” by the publishers of Cape Cod Today. He is also compensated for his photography on a case-by-case basis. Brooks Affid., Exh. B at ¶¶6-7.
- 8. Consistent with the usual operation of a “blog,” Robbins’ articles and opinions are intended to cause discussion among his readers about the subject matter of his “posts.” Because the matters he writes about are matters of public debate, typically the subject of official proceedings before a building department, zoning board, conservation commission or other regulatory body, they engender controversy and debate. As a result, the Robbins Report consistently rates among the top blogs for number of comments received. Id. at ¶6.

9. In addition to the comments Robbins receives as a direct result of his “reports,” Robbins also receives a substantial number of private emails that provide him with information and sources of information on the matters under discussion or others. Robbins Affid., Exh. A at ¶7.
10. The subject matter of the Complaint filed against Robbins is a blog post authored by Robbins that first appeared on March 11, 2008, entitled, “Barnstable Harbor, Filling in and falling in.” A copy of the blog post is attached to the Robbins Affidavit as part of Exhibit A-6.
11. The gravamen of the plaintiffs’ Complaint against the defendant are the following allegations:
 - a. The defendant referred to the plaintiff Dugas as “ the infamous shit-stirring Joe Dugas” (Complaint, ¶54);
 - b. The defendant referred to the plaintiff Revere as “Paul ‘the dredge isn’t coming’ Revere” (Complaint, ¶54);
 - c. The defendant falsely claimed that the reason the harbor wasn’t being dredged was because of the plaintiffs’ action in litigating the Barnstable Conservation Commission’s granting of an Order of Conditions governing the dredging project (Complaint, ¶¶53-59).
12. It is a fact that Joseph Dugas and others, represented by Revere, (a) appealed to the DEP a grant of an Order of Conditions issued by the Barnstable Conservation Commission (Plaintiffs’ Complaint, ¶19), and, after DEP issued a Superceding Order of Conditions allowing the dredging project to proceed (Plaintiffs’ Complaint, ¶29), (b) filed a petition for an adjudicatory hearing of the DEP’s

issuance of a Superceding Order (Plaintiffs' Complaint, ¶32), the inescapable effect of which was to delay the conservation-related permitting for the dredging project.

13. Robbins referred to Mr. Dugas as “the infamous shit-stirring Joe Dugas” because he was aware that during the past eighteen years, Dugas has sued the Barnstable Board of Appeals twice, the Barnstable Planning Board once, the Barnstable Conservation Commission once and the Yarmouth Board of Appeals once. Robbins Affid., Exh. A at ¶9.

14. Six weeks after the publication of Robbins' report, the plaintiff Revere transmitted a letter to Walter Brooks, Editor and Publisher of Cape Cod Today. Brooks Affid., Exh. B at 9. His letter outlined a number of objections to the Robbins report and made certain demands on the website. A copy of the letter is attached hereto as Exhibit D.

15. Immediately after Brook's receipt of Revere's letter, Brooks and Revere engaged in several telephone conversations, characterized by Brooks as “pleasant and cordial,” in which Revere assured Brooks that he had no intention of initiating a battle over the First Amendment and preferred to resolve his concerns amicably. Revere then discussed specific words and phrases that he and his client took objection to, and requested that those words and phrases be deleted from the post. Brooks agreed to each and every one of those deletions. Brooks Affid., Exh. B at ¶11.

16. Subsequent to those deletions being made, Revere called Brooks once again to request that one further deletion be made. Brooks acceded to his request and made that deletion as well. Id. at ¶12.
17. Revere never requested that Brooks delete the reference to him as Paul “the dredge isn’t coming” Revere. Id. at ¶13.
18. Brooks agreed to make all of the changes requested by Revere with the specific understanding that it was done in exchange for Revere’s assurance that litigation would not be brought against Cape Cod Today or its paid blogger, Peter Robbins. Id. at ¶14.
19. Whether influenced by the appearance of Robbins’ report or not, on March 21, 2008, the plaintiffs and those they represent entered into a Settlement Agreement with the DEP and the won of Barnstable that dismissed their appeal and permitted the dredging project to proceed, subject to the terms of the agreement. Robbins Affid., Exh. A at ¶14.
20. Neither Revere nor Dugas informed Brooks or Robbins of the March 21, 2008 settlement. Id. at ¶16; Brooks Affid., Exh. B at ¶15. Had Revere mentioned the settlement to Brooks when they spoke, Brooks would have insured that it was reported. Id.
21. On or about Friday, May 2, 2008, Robbins telephoned the DEP public information office to learn the status of the plaintiffs’ appeal. He was informed at that time that a settlement agreement had been entered into by all parties on March 21, 2008. Robbins Affid., Exh. A at ¶14.

22. On Monday, May 5, 2008, Robbins obtained a copy of the settlement agreement from the office of the Barnstable conservation commission, and he reported on the settlement in a post later that day. The article published the Settlement Agreement and contained this statement: “We should all be very pleased that everyone could get together and resolve this issue in a timely fashion.” *Id.* at ¶15.

23. Neither of the plaintiffs have alleged any specific factual basis to support their claim that either have been damaged in any way by the defendant’s publication of the statements complained of.

On the basis of the foregoing, it is irrefutable that the subject matter of the plaintiffs’ Complaint- the Robbins Report article entitled “Barnstable Harbor, Filling in and falling in” - is either a “written statement made in connection with an issue under consideration or review by legislative, executive or judicial body” or a “statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government” as those terms are used in M.G.L. c. 231 §59H and are defined under applicable case law.

It is equally clear that Robbins’ statement with regard to the plaintiffs’ filing of adjudicatory appeals at two levels would necessarily have delayed any final conservation-related permitting for the dredging project – whether or not there were other permitting obstacles also to be overcome. Consequently, the plaintiffs cannot demonstrate that the article is “devoid of any reasonable factual support or any arguable basis in law.”

Therefore is entitled to the prophylactic protections afforded by M.G.L. c. 231 §59H, and the plaintiffs’ Complaint must be dismissed and costs and attorneys fees awarded to the defendant Robbins.

In support hereof, the defendant submits the following exhibits, in addition to the Memorandum of Law submitted herewith.

Exhibit A – Affidavit of Peter Robbins, with attachments A-1 through A-6

Exhibit B – Affidavit of Walter Brooks

Exhibit C – April 24, 2008 letter from Paul Revere III to Walter Brooks

Respectfully submitted,
PETER ROBBINS
By his attorney,

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CERTIFICATE OF SERVICE

I, Peter B. Morin, hereby certify that a copy of the foregoing was sent to counsel of record for the plaintiff by first class mail, postage prepaid, this ___ day of August, 2008.

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